

October 19, 1977

**77-60 MEMORANDUM OPINION FOR THE
DEPUTY ASSOCIATE ATTORNEY GENERAL**

**Travel and Subsistence Expenses for the Director-
Designate of the Federal Bureau of Investigation**

In response to your request, we have examined the question of whether Department of Justice funds are legally available to pay the airfare and per diem for the Federal Bureau of Investigation (FBI) Director-designate's travel to Washington, D.C., in connection with his confirmation hearings. We understand that he came to Washington on October 4, 1977, at the Attorney General's request and intended to remain until his Senate confirmation hearing was to begin on October 11. In the interim, he conferred with the Attorney General and other officers on Department business. We further understand that he has returned home for reasons of health and that the confirmation hearing has been indefinitely postponed. After consultation with the General Accounting Office, we conclude that Department funds may be used to pay travel and subsistence expenses arising from the October 4 trip. We also conclude that they may be used to pay travel and subsistence at such time as he returns for his confirmation hearings if he consults with the Department on official business at the same time.

With respect to travel and subsistence expenses incurred to attend Senate confirmation hearings, the Comptroller General has stated that these are normally "personal" and hence cannot be reimbursed. 53 Comp. Gen. 424, 425 (1973). The same decision holds, however, that an agency may pay these expenses:

If official business, such as conferences with officials of your office, is also conducted by the nominee at the time he is in Washington, D.C., for his confirmation hearings, and such business is determined to be of "substantial benefit" to the [agency] *Id.* at 425.

Thus, if the Director-designate consults with the Attorney General or other Department officers on official business during his confirmation hearing, and the Attorney General or his delegate determines that the

consultation is of "substantial benefit" to the Department, under the holding the payment of his travel and subsistence expenses from Department funds is permissible. As it is our understanding that he has consulted with Department officials in order to familiarize himself with his duties as FBI Director, we conclude that the travel expenses in question may be paid.

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